over acts committed on the river. A Washington citizen licensed by Washington to fish with a purse net was convicted, in an Oregon court, of fishing with such a net on the Washington side of the river, in violation of an Oregon statute prohibiting such fishing in the Columbia River. The court held that the Oregon court did not have jurisdiction over the act in question. *Nielsen* v. *Oregon*, 212 U. S. 315. Thus the court restricted itself to the first two possible interpretations of concurrent jurisdiction, but left the final determination open. The lower federal courts have adopted the first idea, of a joint action,[7] which, although possible, is a narrow and cumbersome interpretation. It is submitted that the second construction adopted by the majority of the state courts[8] is the better. Joint action is unnecessary: each state retains its sovereign right to control acts within its territory; and it is only when there has been no expression of sovereignty by adverse legislation that the foreign state may also exercise jurisdiction therein.

The scope of the jurisdiction depends also on the kind of act committed. Early views[9] restricting this grant of concurrent jurisdiction over rivers to acts affecting commerce have not been followed.[10] But the jurisdiction has been uniformly held not to apply to acts affecting property, either affixed to the soil under the river[11] or to the river banks.[12] This exemption of property[13] could be extended to cover all property not actually on the river and has been held to include the regulation of fishing rights.[14] This seems erroneous; for the acts of fishing and shooting on a stream are uncertain of location, and the jurisdiction is created to obviate just such a difficulty. As to place, the jurisdiction is limited to acts on the river; although offenses on permanent bridges[15] and on vessels temporarily aground[16] are regarded as within its scope. So, by this interpretation of concurrent jurisdiction, courts have found a basis for determining the perplexing cases that may arise on boundary rivers. A simpler way of dealing with the entire question would be for one state to grant to the other exclusive jurisdiction over the whole river.[17]

INJUNCTIONS AGAINST THE ENFORCEMENT OF JUDGMENTS OBTAINED BY PERJURY. — Although at first jealously resisted,[1] the power of equity courts to enjoin the enforcement of judgments at law has, since the famous clash

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[7] *In re* Matteson, 69 Fed. 535; *Ex parte* Deseiro, 152 Fed. 1004. See The Annie M. Smull, 2 Sawyer (Fed.) 226.

[8] J. S. Keator Lumber Co. *v.* St. Croix Boom Co., 72 Wis. 62; McFall *v.* Commonwealth, 2 Met. (Ky.) 395; Wiggens Ferry Co. *v.* Reddig, *supra;* Memphis & Cincinnati Packet Co. *v.* Pikey, 142 Ind. 304; Church *v.* Chambers, 3 Dana (Ky.) 274. See State *v* Faudre, 54 W. Va. 122.

[9] See Buck *v.* Ellenbolt, 84 Ia. 395; State *v.* George, 60 Minn. 503.

[10] Wedding *v.* Meyler, *supra;* McFall *v.* Commonwealth, *supra;* Dugan *v.* Indiana, 125 Ind. 130.

[11] Garner's Case, 3 Gratt. (Va.) 654. See Buck *v.* Ellenbolt, *supra.*

[12] Gilbert *v.* The Moline Water Power & Mfg. Co., 19 Ia. 319; Mississippi & Missouri R. R. Co. *v.* Ward, 2 Black (U. S.) 485; Attorney-General *v.* Delaware & Bound Brook R. R. Co., 27 N. J. Eq. 1.

[13] This view has been expressly adopted by the Supreme Court. See Wedding *v.* Meyler, *supra.*

[14] Roberts *v.* Fullerton, 117 Wis. 222.

[15] State *v.* George, *supra;* Comm. *v.* Shaw, 8 Pa. Dist. Rep. 509.

[16] State of Iowa *v.* Mullen, 35 Ia. 199.

[17] This is the agreement between New York and New Jersey. See note 2, *ante*, and also Ferguson *v.* Ross, 126 N. Y. 459.

[1] Heath *v.* Ryley, Cro. Jac. 335.

between Lord Coke and Lord Ellesmere,[2] been firmly established. It is a rule of law that judgments are conclusive between the parties in matters that were or might have been urged.[3] But this rule does not apply where the facts clearly show, either that the defeated party was unable to present his defense in the determination because the court was incompetent to hear it, or that without fault on his part he was prevented from presenting it through accident or fraud.[4] Accordingly, if a defense, owing to its equitable nature could not have been pleaded,[5] or if because of sickness[6] or ignorance[7] the defeated party could not appear, equity will enjoin the enforcement of the judgment. As to what constitutes such fraud as to justify equitable interference the authorities are in conflict. The great majority, however, require that the fraud shall be extrinsic and collateral, and not relative to an issue tried in the court of law.[8] So perjury, however clearly established,[9] is generally considered no ground for equitable relief, since it is related to matters involved in the consideration of the merits, and therefore intrinsic.[10] A recent decision upholds the minority view that perjury will vitiate a judgment obtained against one free from negligence in the determination.[11] *Boring* v. *Ott*, 119 N. W. 865 (Wis.).

The reason that equity relieves against judgments secured through accident or fraud is to prevent the retention of an advantage unfairly or unconscionably gained.[12] Assuming that the injured party was not guilty of laches, the same reason applies to intrinsic as well as extrinsic fraud, and hence to perjury.[13] Two main objections urged against equitable interference because of perjury are, first, that, as the case was none the less tried on its merits despite the perjury,[14] to permit a reëxamination would result in flooding the courts with litigation;[15] second, if judgments may be impeached on the ground of perjury, each defeated party may in turn charge the other with perjury in the last suit, so that litigation would never terminate.[16] To sustain the first objection we are driven to say that one against whom a judgment has been gained by fraud in some collateral matter, such as a false promise of compromise, has not had his day in court; but that one who without fault on his part was ignorant of, or unable to establish a fraud which later clearly appeared, has had a fair trial on the merits. Yet

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[2] See Campbell, Lives of the Lord Chancellors, 3 ed., 332.

[3] Glover *v.* Hedges, 1 N. J. Eq. 113; Demerit *v.* Lyford, 27 N. H. 541.

[4] Marine Insurance Co. *v.* Hodgson, 7 Cranch (U. S.) 332; Vilas *v.* Jones, 1 N. Y. 274.

[5] Hibbard *v.* Eastman, 47 N. H. 507.

[6] Owen *v.* Gerson, 119 Ala. 217.

[7] Adams *v.* Secor, 6 Kan. 542. Failure to set up a defense through accident or mistake is ground for relief, especially when coupled with concealment by the opposing party. Currier *v.* Esty, 110 Mass. 536; Herbert *v.* Herbert, 49 N. J. Eq. 70.

[8] Baker *v.* Wadsworth, 67 L. J. Q. B. N. S. 301; Graves *v.* Graves, 132 Ia. 199; United States *v.* Throckmorton, 98 U. S. 61. *Contra*, Marshall *v.* Holmes, 141 U. S. 589. These last two cases seem to constitute an irreconcilable conflict in the Supreme Court. See Graves *v.* Faurot, 64 Fed. 241.

[9] Pico *v.* Cohn, 91 Cal. 129.

[10] Maryland Steel Co. *v.* Marney, 91 Md. 360.

[11] Similarly fraud in the original cause of action, such as forgery, which must be regarded as extrinsic fraud, has been held to vitiate the judgment. Barnesley *v.* Powel, 1 Ves. Sr. 119.

[12] Jewett *v.* Dringer, 31 N. J. Eq. 586; Perry *v.* Johnston, 95 Fed. 322.

[13] See Greene *v.* Greene, 68 Mass. 361; Given's Appeal, 121 Pa. St. 260.

[14] Friese *v.* Hummel, 26 Ore. 145.

[15] United States *v.* Throckmorton, *supra*.

[16] Greene *v.* Greene, *supra*; Flower *v.* Lloyd, 10 Ch. D. 327.

in both cases it is inequitable for the victor to retain his advantage.[17] The second objection is more serious. It is to be noted, however, that before relief is granted on the ground of perjury it is required that the plaintiff have a meritorious defense and that he clearly establish the perjury.[18] Consequences are not always conclusive against a rule of positive law;[19] and here the equity of the case is clear.

It is said that the refusal to enjoin the enforcement of judgments on the ground of perjury is a necessary choice between the evils of injustice in individual cases and the encouragment of vexatious litigation.[20] But a party seeking redress is required to exhaust first his legal remedies,[21] to be free from fault,[22] and clearly to establish the perjury[23] without which judgment would not have gone against him.[24] It is submitted that with these safeguards against undue litigation the lesser evil is to follow the equity of the matter.

CONDITIONS AGAINST ALIENATION IN INSURANCE POLICIES. — The standard form insurance policies usually provide for avoidance by alienation in one of three ways: (1) by a condition against "sale" or "conveyance," etc.; (2) by a condition against "sale, transfer, or change in title"; (3) by a condition against "change in title or interest." Such conditions, when any doubt arises, are rightly to be construed against the underwriter; although even this latitude is sometimes exceeded by the courts.

To violate the condition against "sale" there must be a parting with all the interest of the assured: if he retains any interest which amounts to an insurable one, the policy is not forfeited.[1] So where the assured conveys property, reserving to himself a life estate, there is no "sale."[2] Nor is the condition violated by a change of interest as between the partners of a firm, whether one partner withdraws[3] or a new one is admitted.[4] And it has even been held that a sale by the assured of all his interest to the holder of an outstanding tax title who immediately reconveyed the fee was not within the prohibition of the condition, because only a nominal sale.[5]

The condition against "change in title" is construed equally unfavorably to the underwriters. It is violated by transfers between partners,[6] and by a conveyance to a third party in trust for the assured,[7] but not by the execu-

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[17] Barnesley *v.* Powel, *supra.*

[18] Briesch *v.* McCauley, 7 Gill (Md.) 189. In North Carolina conviction of perjury is required. Peagram *v.* King, 9 N. C. 295.

[19] Greene *v.* Greene, *supra.*

[20] United States *v.* Throckmorton, *supra.*

[21] Mo. Ry. Co. *v.* Hoereth, 144 Mo. 136; Ponder *v.* Cox, 26 Ga. 485.

[22] Carney *v.* Marseilles, 136 Ill. 401; Jewett *v.* Dringer, *supra.*

[23] Glover *v.* Hedges, 1 N. J. Eq. 113.

[24] Bloss *v.* Hull, 27 W. Va. 503.

[1] Grable *v.* German Ins. Co., 32 Neb. 645.

[2] Clinton *v.* Insur. Co., 176 Mass. 486. See Lane *v.* Maine Mutual Fire Ins. Co., 12 Me. 44.

[3] Powers *v.* Guardian Ins. Co., 136 Mass. 108; Hoffman *v.* Aetna Fire Ins. Co., 32 N. Y. 405. The plaintiff recovered for the entire loss.

[4] Blackwell *v.* Ins. Co., 48 Oh. St. 533. In this case the court intimated that the amount of the recovery would be limited to the interest retained by the assured.

[5] Kyte *v.* Insur. Co., 144 Mass. 43.

[6] Hathaway *v.* Ins. Co., 64 Ia. 229. See Oldham *v.* Fire Ins. Co., 90 Ia. 225.

[7] Ins. Co. *v.* Jensen, 56 Neb. 284.